

Senate Study Bill 3094 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED JUDICIAL BRANCH
BILL)

A BILL FOR

1 An Act relating to judicial branch administration, child
2 custody and visitation matters, and making appropriations.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

COURT RECORDINGS

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Section 1. Section 232.41, Code 2009, is amended to read as follows:

232.41 Reporter Notes or recordings required.

Stenographic notes or mechanical or electronic recordings shall be taken of all court hearings held pursuant to this division unless waived by the parties. The child shall not be competent to waive the reporting requirement, but waiver may be made for the child by the child's counsel or guardian ad litem. ~~Matters which must be reported under the provisions of this section shall be reported in the same manner as required in section 624.9.~~

Sec. 2. Section 232.94, Code 2009, is amended to read as follows:

232.94 Reporter Notes or recordings required.

Stenographic notes or electronic or mechanical recordings shall be taken of all court hearings held pursuant to this division unless waived by the parties. The child shall not be competent to waive the reporting requirement, but waiver may be made for the child by the child's counsel or guardian ad litem. ~~Matters which must be reported under the provisions of this section shall be reported in the same manner as required in section 624.9.~~

Sec. 3. Section 232.115, Code 2009, is amended to read as follows:

232.115 Reporter Notes or recordings required.

Stenographic notes or electronic or mechanical recordings shall be taken of all court hearings held pursuant to this division unless waived by the parties. The child shall not be competent to waive the reporting requirement, but waiver may be made for the child by the child's counsel or guardian ad litem. ~~Matters which must be reported under the provisions of this section shall be reported in the same manner as required in section 624.9.~~

~~1 part or all of the defendant's community service obligation
2 through the donation of property to a charitable organization
3 other than a governmental subdivision. A donation of property
4 to a charitable organization offered in satisfaction of some
5 part or all of a community service obligation under this
6 subsection is not a deductible contribution for the purposes of
7 federal or state income taxes.~~

8 Sec. 8. Section 910.1, subsection 2, Code 2009, is amended
9 by striking the subsection.

10 Sec. 9. Section 910.1, subsection 4, Code 2009, is amended
11 to read as follows:

12 4. "*Restitution*" means payment of pecuniary damages to
13 a victim in an amount and in the manner provided by the
14 offender's plan of restitution. "*Restitution*" also includes
15 fines, penalties, and surcharges, ~~the contribution of funds
16 to a local anticrime organization which provided assistance
17 to law enforcement in an offender's case,~~ the payment of
18 crime victim compensation program reimbursements, payment of
19 restitution to public agencies pursuant to section 321J.2,
20 subsection 9, paragraph "b", court costs including correctional
21 fees approved pursuant to section 356.7, court-appointed
22 attorney fees ordered pursuant to section 815.9, including the
23 expense of a public defender, and the performance of a public
24 service by an offender in an amount set by the court when the
25 offender cannot reasonably pay all or part of the court costs
26 including correctional fees approved pursuant to section 356.7,
27 or court-appointed attorney fees ordered pursuant to section
28 815.9, including the expense of a public defender.

29 Sec. 10. Section 910.2, Code 2009, is amended to read as
30 follows:

31 **910.2 Restitution or community service to be ordered by**
32 **sentencing court.**

33 In all criminal cases in which there is a plea of guilty,
34 verdict of guilty, or special verdict upon which a judgment
35 of conviction is rendered, the sentencing court shall order

1 that restitution be made by each offender to the victims of
2 the offender's criminal activities, to the clerk of court
3 for fines, penalties, surcharges, and, to the extent that
4 the offender is reasonably able to pay, for crime victim
5 assistance reimbursement, restitution to public agencies
6 pursuant to section 321J.2, subsection 9, paragraph "b",
7 court costs including correctional fees approved pursuant
8 to section 356.7, or court-appointed attorney fees ordered
9 pursuant to section 815.9, including the expense of a public
10 defender, when applicable, ~~or contribution to a local~~
11 ~~antierime organization~~. However, victims shall be paid in
12 full before fines, penalties, ~~and~~ surcharges, crime victim
13 compensation program reimbursement, public agencies, court
14 costs including correctional fees approved pursuant to section
15 356.7, and court-appointed attorney fees ordered pursuant to
16 section 815.9, including the expenses of a public defender,
17 ~~or contributions to a local antierime organization~~ are paid.
18 In structuring a plan of restitution, the court shall provide
19 for payments in the following order of priority: victim,
20 fines, penalties, ~~and~~ surcharges, crime victim compensation
21 program reimbursement, public agencies, court costs including
22 correctional fees approved pursuant to section 356.7,
23 and court-appointed attorney fees ordered pursuant to section
24 815.9, including the expense of a public defender, ~~and~~
25 ~~contribution to a local antierime organization~~.

26 When the offender is not reasonably able to pay all or a
27 part of the crime victim compensation program reimbursement,
28 public agency restitution, court costs including correctional
29 fees approved pursuant to section 356.7, or court-appointed
30 attorney fees ordered pursuant to section 815.9, including
31 the expense of a public defender, ~~or contribution to a local~~
32 ~~antierime organization~~, the court may require the offender
33 in lieu of that portion of the crime victim compensation
34 program reimbursement, public agency restitution, court costs
35 including correctional fees approved pursuant to section

1 356.7, or court-appointed attorney fees ordered pursuant to
2 section 815.9, including the expense of a public defender, ~~or~~
3 ~~contribution to a local anticrime organization~~ for which the
4 offender is not reasonably able to pay, to perform a needed
5 public service for a governmental agency or for a private
6 nonprofit agency which provides a service to the youth,
7 elderly, or poor of the community. When community service is
8 ordered, the court shall set a specific number of hours of
9 service to be performed by the offender which, for payment
10 of court-appointed attorney fees ordered pursuant to section
11 815.9, including the expenses of a public defender, shall be
12 approximately equivalent in value to those costs. The judicial
13 district department of correctional services shall provide for
14 the assignment of the offender to a public agency or private
15 nonprofit agency to perform the required service.

16 Sec. 11. Section 915.100, subsection 2, paragraph e, Code
17 2009, is amended to read as follows:

18 e. Victims shall be paid in full pursuant to an order
19 of restitution, before fines, penalties, surcharges, crime
20 victim compensation program reimbursement, public agency
21 reimbursement, court costs, correctional fees, court-appointed
22 attorney fees, or expenses of a public defender, ~~or~~
23 ~~contributions to local anticrime organizations are paid.~~

24 DIVISION III

25 MISCELLANEOUS PROVISIONS

26 Sec. 12. Section 8A.504, subsection 2, paragraph j, Code
27 2009, is amended by adding the following new subparagraph:

28 NEW SUBPARAGRAPH. (4) The collection entity shall remit
29 to the state court administrator, on at least a monthly basis,
30 ten percent of the amounts set off to be used by the judicial
31 branch to defray the costs of collecting unpaid court debt
32 pursuant to section 602.8107.

33 Sec. 13. Section 236.4, subsection 2, Code 2009, is amended
34 to read as follows:

35 2. The court may enter any temporary order it deems

1 necessary to protect the plaintiff from domestic abuse prior to
2 the hearing, including temporary custody or visitation orders
3 pursuant to subsection 2A, upon good cause shown in an ex parte
4 proceeding. Present danger of domestic abuse to the plaintiff
5 constitutes good cause for purposes of this subsection.

6 Sec. 14. Section 236.4, Code 2009, is amended by adding the
7 following new subsection:

8 NEW SUBSECTION. 2A. The court may award temporary custody
9 of or establish temporary visitation rights with regard to
10 children under eighteen years of age. In awarding temporary
11 custody or temporary visitation rights, the court shall give
12 primary consideration to the safety of the alleged victim
13 and the children. If the court finds that the safety of
14 the alleged victim will be jeopardized by unsupervised or
15 unrestricted visitation, the court shall set conditions
16 or restrict visitation as to time, place, duration, or
17 supervision, or deny visitation entirely, as needed to guard
18 the safety of the victim and the children. The court shall
19 also investigate whether any other existing orders awarding
20 custody or visitation should be modified.

21 Sec. 15. Section 236.4, subsection 3, Code 2009, is amended
22 to read as follows:

23 3. If a hearing is continued, the court may make or extend
24 any temporary order under subsection 2 or 2A that it deems
25 necessary.

26 Sec. 16. Section 321.236, subsection 1, paragraph a, Code
27 Supplement 2009, is amended to read as follows:

28 a. Parking meter, snow route, and overtime parking
29 violations which are contested shall be charged and proceed
30 before a court the same as other traffic violations. Filing
31 fees and court costs shall be assessed as provided in section
32 ~~602.8106, subsection 1, and section 805.6, subsection 1,~~
33 paragraph "a" for parking violation cases.

34 Sec. 17. Section 598.15, subsection 1, Code 2009, is amended
35 to read as follows:

1 1. The ~~court shall order~~ the parties to any action
2 which involves the issues of child custody or visitation
3 ~~to~~ shall participate in a court-approved course to educate
4 and sensitize the parties to the needs of any child or party
5 during and subsequent to the proceeding within forty-five
6 days of the service of notice and petition for the action
7 or within forty-five days of the service of notice and
8 application for modification of an order. Participation in the
9 course may be waived or delayed by the court for good cause
10 including, but not limited to, a default by any of the parties
11 or a showing that the parties have previously participated in a
12 court-approved course or its equivalent. Participation in the
13 course is not required if the proceeding involves termination
14 of parental rights of any of the parties. A final decree shall
15 not be granted or a final order shall not be entered until the
16 parties have complied with this section, unless participation
17 in the course is waived or delayed for good cause or is
18 otherwise not required under this subsection.

19 Sec. 18. NEW SECTION. 602.1615 Records retention and
20 availability.

21 In addition to the rules prescribed under section 602.1614,
22 the supreme court shall prescribe rules regarding the
23 retention of all judicial branch records, including the
24 creation, storage, duplication, reproduction, disposition, and
25 destruction of such records, and such rules shall also include
26 the availability of the records to the public and the security
27 of such records. The rules prescribed pursuant to this section
28 shall prevail over any other laws, rules, or court rules except
29 for the rules prescribed under section 602.1614.

30 Sec. 19. Section 602.3101, subsection 2, Code 2009, is
31 amended to read as follows:

32 2. The ~~state court administrator or a designee of the~~
33 ~~state court administrator~~ supreme court shall ~~act as~~ appoint
34 the administrator ~~to~~ of the board.

1 Sec. 20. Section 602.3106, subsection 2, Code 2009, is

2 amended by striking the subsection and inserting in lieu
3 thereof the following:

4 2. The fees collected are appropriated to the judicial
5 branch and shall be used to offset the expenses of the board,
6 including the costs of administering the examination.

7 Sec. 21. Section 602.8105, subsection 1, Code Supplement
8 2009, is amended by adding the following new paragraph:

9 NEW PARAGRAPH. *j.* For filing a tribal judgment, one hundred
10 dollars.

11 Sec. 22. Section 602.8106, subsection 1, paragraph c, Code
12 Supplement 2009, is amended to read as follows:

13 *c.* For filing and docketing a complaint or information or
14 uniform citation and complaint for parking violations under
15 sections 321.236, 321.239, 321.358, 321.360, and 321.361,
16 ~~eight dollars, effective January 1, 2004. The court costs in~~
17 ~~cases of parking meter and overtime parking violations which~~
18 ~~are contested, and charged and collected pursuant to section~~
19 ~~321.236, subsection 1, or pursuant to a uniform citation and~~
20 ~~complaint, are eight dollars per information or complaint~~
21 ~~or per uniform citation and complaint effective January 1,~~
22 ~~1991~~ thirty-five dollars.

23 Sec. 23. Section 602.10108, Code 2009, is amended to read
24 as follows:

25 **602.10108 Fees.**

26 1. The ~~board~~ supreme court shall set the fees for
27 examination and for admission. The fees for examination
28 shall be based upon the annual cost of administering the
29 examinations. The fees for admission shall be based upon the
30 costs of conducting an investigation of the applicant and the
31 administrative costs of sustaining the board, ~~which shall~~
32 ~~include but shall not be limited to:~~

33 ~~1. Expenses and travel for board members and temporary~~
34 ~~examiners.~~

35 ~~2. Office facilities, supplies, and equipment.~~

1 ~~3. Clerical assistance.~~

2 2. Fees shall be collected by the board and transmitted
3 ~~to the treasurer of state who shall deposit the fees in the~~
4 ~~general fund of the state~~ are appropriated to the judicial
5 branch and shall be used to offset the costs of administering
6 this article.

7 Sec. 24. Section 607A.8, subsection 2, Code 2009, is amended
8 to read as follows:

9 2. A grand juror and a petit juror in all courts shall
10 receive reimbursement for mileage expenses at the rate
11 ~~specified in section 602.1509~~ by the supreme court for each
12 mile traveled each day to and from the residence of the juror
13 to the place of service or attendance, and shall receive
14 reimbursement for actual expenses of parking, as determined by
15 the clerk of the district court. A juror who is a person with a
16 disability may receive reimbursement for the costs of alternate
17 transportation from the residence of the juror to the place of
18 service or attendance. A juror shall not receive reimbursement
19 for mileage expenses or actual expenses of parking when the
20 juror travels in a vehicle for which another juror is receiving
21 reimbursement for mileage and parking expenses.

22 Sec. 25. Section 607A.47, Code 2009, is amended to read as
23 follows:

24 **607A.47 Juror questionnaire.**

25 The court may, on its own motion, or upon the motion of a
26 party to the case or upon the request of a juror, order the
27 sealing or partial sealing of a completed juror questionnaire,
28 if the court finds that it is necessary to protect the safety
29 or privacy of a juror or a family member of a juror, including
30 the privacy of a juror or a family member of a juror who has
31 been the victim of sexual or domestic abuse.

32 Sec. 26. Section 626D.3, Code 2009, is amended by adding the
33 following new subsection:

34 NEW SUBSECTION. 4. The clerk of the district court shall
35 collect a fee as provided in section 602.8105, subsection 1,
1 for filing a tribal judgment.

2 Sec. 27. Section 805.6, subsection 1, paragraph a,
3 subparagraph (1), Code Supplement 2009, is amended to read as
4 follows:

5 (1) The commissioner of public safety, the director of
6 transportation, and the director of the department of natural
7 resources, acting jointly, shall adopt a uniform, combined
8 citation and complaint which shall be used for charging all
9 traffic violations in Iowa under state law or local regulation
10 or ordinance, and which shall be used for charging all other
11 violations which are designated by sections 805.8A, 805.8B, and
12 805.8C to be scheduled violations. ~~The filing fees and court
13 costs in cases of parking meter and overtime parking violations
14 which are denied are as stated in section 602.8106, subsection
15 1.~~ The court costs in scheduled violation cases where a court
16 appearance is not required are as stated in section 602.8106,
17 subsection 1. The court costs in scheduled violation cases
18 where a court appearance is required are as stated in section
19 602.8106, subsection 1. This subsection does not prevent the
20 charging of any of those violations by information, by private
21 complaint filed under chapter 804, or by a simple notice of
22 fine where permitted by section 321.236, subsection 1. Each
23 uniform citation and complaint shall be serially numbered and
24 shall be in quintuplicate, and the officer shall deliver the
25 original and a copy to the court where the defendant is to
26 appear, two copies to the defendant, and a copy to the law
27 enforcement agency of the officer. If the uniform citation and
28 complaint is created electronically, the issuing agency shall
29 cause the uniform citation and complaint to be transmitted
30 to the court, and the officer shall deliver a document to
31 the defendant which contains a section for the defendant and
32 a section which may be sent to the court. The court shall
33 forward an abstract of the uniform citation and complaint in
34 accordance with section 321.491 when applicable.

1 Sec. 28. Section 907.9, subsection 4, Code 2009, is amended
2 to read as follows:

3 4. At the expiration of the period of probation if the
4 fees imposed under section 905.14 and court debt collected
5 pursuant to section 602.8107 have been paid, the court shall
6 order the discharge of the person from probation. If portions
7 of the court debt remain unpaid, the person shall establish a
8 payment plan with the clerk of the district court or the county
9 attorney prior to the discharge. The court shall forward to
10 the governor a recommendation for or against restoration of
11 citizenship rights to that person upon discharge. A person
12 who has been discharged from probation shall no longer be held
13 to answer for the person's offense, except for any unpaid
14 court debt as defined in section 602.8107. Upon discharge
15 from probation, if judgment has been deferred under section
16 907.3, the court's criminal record with reference to the
17 deferred judgment shall be ~~expunged~~ sealed, except as provided
18 in section 907.4, unless the defendant has unpaid court debt
19 as defined in section 602.8107 in the case that includes the
20 deferred judgment. The record shall remain unsealed until such
21 time the court debt is paid in full. The record maintained
22 by the state court administrator as required by section
23 907.4 shall not be expunged. The court's record shall not be
24 expunged in any other circumstances.

25 EXPLANATION

26 This bill relates to the administration of the judicial
27 branch, and makes an appropriation. The bill is separated into
28 three divisions to enhance the readability of the bill.

29 DIVISION I. The division amends Code sections 232.41
30 (delinquency proceedings), 232.94 (child in need of assistance
31 proceedings), and 232.115 (termination of parental rights
32 proceedings), by striking a similar provision in each section
33 requiring the proceedings to be recorded by a reporter in
34 writing or shorthand.

35 The division repeals Code section 602.6603, permitting
1 a district judge or district associate judge to appoint a
2 certified court reporter, and permitting the appointment of an

3 uncertified court reporter under certain circumstances.

4 The division also strikes a reference to Code section
5 602.6603 in Code section 602.3201. The bill specifies that the
6 supreme court, by court rule, may designate when an uncertified
7 court reporter may engage in the profession of shorthand
8 reporting. Currently, Code section 602.6603 governs when an
9 uncertified court reporter may engage in the profession of
10 shorthand reporting.

11 The division also repeals Code sections 624.9, 624.10, and
12 624.11, requiring hearings and trials to be reported in writing
13 or shorthand.

14 DIVISION II. The division prohibits any donation to an
15 agency, organization, or political subdivision of the state as
16 part of any deferred prosecution, dismissal, sentence, or other
17 penalty. The bill eliminates a provision allowing a criminal
18 defendant to make a donation in lieu of performing community
19 service. The bill also eliminates provisions allowing a
20 contribution by a criminal defendant to a local anticrime
21 organization as part of the offender's restitution plan.

22 DIVISION III. The division requires the department of
23 administrative services and any other state agency that
24 maintains a separate accounting system and elects to establish
25 a debt collection setoff procedure, to remit to the state court
26 administrator, 10 percent of the amounts set off from the
27 collection of delinquent court debt for use by the judicial
28 branch to defray the costs of collecting unpaid court debt.

29 The division provides that the court may enter temporary
30 custody and visitation orders prior to a hearing to determine
31 whether domestic abuse has occurred under Code chapter 236. In
32 awarding temporary custody and visitation under the bill, the
33 court shall give primary consideration to the safety of the
34 alleged victim and the children.

35 The division requires each party to an action which involves
1 the custody of a child or visitation to participate in a
2 court-approved course to educate and sensitize the parties to

3 the needs of any child involved in the custody or visitation
4 action. Current law requires the court to order the parties
5 to attend such a course.

6 The division requires the supreme court to prescribe
7 rules regarding the retention of all judicial branch records,
8 including the creation, storage, duplication, reproduction,
9 disposition, and destruction of such records, and such rules
10 shall also include the availability of the records to the
11 public and the security of such records. The rules prescribed
12 pursuant to the division shall prevail over any other laws,
13 rules, or court rules except for the rules prescribed under
14 Code section 602.1614 relating to electronic records.

15 The division requires the supreme court to appoint the
16 administrator of the board of examiners of shorthand reporters.
17 Current law provides that the state court administrator or
18 a designee of the state court administrator shall act as
19 administer of the board.

20 The division specifies that the fees assessed for shorthand
21 certification examinations are appropriated to the judicial
22 branch and shall be used to offset the expenses of the board,
23 including the costs of administering examinations.

24 The division increases the fee for filing and docketing a
25 complaint or information for state parking violations from \$8
26 to \$35. The division eliminates the court costs assessed for
27 contested local parking meter and overtime parking violations.

28 The division transfers the authority to set fees for
29 examination and admission to practice law in Iowa from the
30 board of law examiners to the supreme court. The division also
31 specifies that the fees collected for examination and admission
32 are appropriated to the judicial branch and shall be used to
33 offset the costs of administering the examination and admission
34 process to practice law. Current law requires the examination
35 and admission fees to be deposited into the general fund of the
1 state.

2 The division separates the authority of the supreme court

3 to establish the mileage reimbursement rate for jurors from
4 the authority of the supreme court to establish the mileage
5 reimbursement rate for witnesses, judicial officers, and court
6 employees. Currently, the mileage reimbursement rate for
7 jurors, witnesses, judicial officers, and court employees is
8 established under the authority of the supreme court pursuant
9 to one provision in Code section 602.1509.

10 The division permits the court to seal or partially seal a
11 juror questionnaire in order to protect the safety and privacy
12 of a juror or a family member of a juror who has been the victim
13 of sexual or domestic abuse.

14 The division sets the fee for filing a tribal judgment with
15 the clerk of the district court at \$100. The distribution
16 of court fees collected by the clerk of the district court
17 is governed by Code section 602.8108. Current law does not
18 establish a filing fee for a tribal judgment.

19 The division specifies that a person who has been discharged
20 from probation shall no longer be held accountable for the
21 person's offense, except if the person has unpaid court debt as
22 defined in Code section 602.8107.

23 The division also specifies that a person who receives
24 a deferred judgment shall, upon successful completion of
25 probation, have any reference to the record containing the
26 deferred judgment sealed, except if the person has unpaid
27 court debt in the case that includes the deferred judgment.
28 The division further specifies that the record containing the
29 deferred judgment shall not be sealed until the court debt is
30 paid in full.